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**United States Circuit Court
of Appeals
For the Ninth Circuit**

PORTLAND FEEDER COMPANY, a corporation,
Plaintiff in Error,

vs.

OREGON SHORT LINE RAILROAD COMPANY,
a corporation,

Defendant in Error.

Brief for Plaintiff in Error

On Writ of Error to the District Court of the
United States for the District of Oregon.

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FILED

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No. 3104

United States Circuit Court of Appeals

For the Ninth Circuit

PORTLAND FEEDER COMPANY, a corporation,
Plaintiff in Error,

vs.

OREGON SHORT LINE RAILROAD COMPANY,
a corporation,
Defendant in Error.

Brief for Plaintiff in Error

On Writ of Error to the District Court of the
United States for the District of Oregon.

STATEMENT OF THE CASE.

This is a companion case to No. 3103, *Portland Cattle Loan Company*, a corporation, plaintiff in error, v. *Oregon Short Line Railroad Company*, a corporation, defendant in error. The cases were not consolidated, but were tried to the court as one case, separate findings and separate judgment, however, being entered in favor of defendant in error. Identically the same question is involved in

each case and the parties are agreed that the two cases may be submitted together on the briefs filed in No. 3103.

We therefore ask leave to refer to the brief filed for plaintiff in error in No. 3103; and we shall include in this memorandum only a statement of the particulars in which the facts herein differ from those in No. 3103.

This action is one to recover a balance of freight charges claimed to be due for the transportation of two train loads of cattle: one from Hereford, Texas, to Red Rock, Montana, and the other from Abernathy, Texas, to points in Idaho (Transcript pp. 5-9). Hereford and Abernathy are stations on the Pecos and Northern Texas Railway a short distance from Amarillo, which under the tariffs was a base point for rate making. The shipments moved through Amarillo and the dispute is over the claim of the Railway Company (asserted years after the shipment was handled) that the rate from the base point, Amarillo, was not applicable from Hereford and Abernathy either as a flat rate or with a differential, and that the local charges from the initial points to the base point, Amarillo, were collectible.

The second cause of action involving the shipment from Abernathy to Idaho points may be disregarded in the consideration of the case here in view of the concession made by plaintiff in error

at the trial (Transcript pp. 155-156). The point of origin of these shipments, Abernathy, is a station listed in the tariffs as one taking a differential over the Amarillo rate of \$116.50; and this rate construction is made contingent upon routing and application provisions with respect to the initial and delivering lines, which application and routing provisions as to the lines concerned in this shipment do not appear in the tariff (Transcript pp. 225, 226, 231, 232).

The shipment involved in the second cause of action is in the same situation as the shipment in the Portland Cattle Loan Company case, No. 3103. It originated at Hereford and the rate charged and collected for its transportation was made up in the same way; that is, by applying to Hereford the Amarillo base rate of \$116.50 (Transcript p. 185).

The question in this case is therefore identical with that in No. 3103. The present contention of the carriers is that the tariff did not permit the application of the Amarillo base rate to Hereford, but that the local charge between these points was collectible. Plaintiff in error insists that the original construction given the tariffs is the correct one, and that there was ample tariff authority for applying the \$116.50 Amarillo rate to shipments originating at Hereford, and that no further charge is now properly assessable.

ASSIGNMENTS OF ERROR.

The court erred in overruling the motion of plaintiff in error for findings in its favor upon the ground that the tariffs of defendant in error and its connecting carriers authorized the rate originally collected and did not permit or require a subsequent collection of any additional charges; and the court erred in making and entering general findings for defendant in error and in holding and determining that the tariff of the carriers authorized and required the collection of the local rate from Hereford to Amarillo in addition to the charges previously paid.

ARGUMENT.

As previously stated, the only question in this case is whether under the applicable railway tariffs the carriers properly applied to the Hereford shipment of plaintiff in error the Amarillo base rate of \$116.50. This is the controlling question in the Portland Cattle Loan case, No. 3103, and the position of plaintiff in error is fully discussed by the brief served and filed on behalf of plaintiff in error in that case. Since the cases were tried together and presumably will be argued and submitted together, we assume no necessity exists for repeating here the argument made in the briefs filed in No. 3103. We therefore ask leave to refer to the brief of plaintiff in error in No. 3103, and ask that the argument there made in support of the contention that the railway tariffs justified the application of the Amarillo rate to Hereford be considered as having been made on behalf of plaintiff in error in this case.

Respectfully submitted,

CAREY AND KERR and
CHARLES A. HART,
Attorneys for Plaintiff in Error.

